

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER 05-0201  
RESPONSIBLE OFFICER  
SALES TAX AND WITHHOLDING TAX  
For Tax Period 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**Issue**

**I. Sales and Withholding Tax** -Responsible Officer Liability

**Authority:** IC 6-2.5-9-3, IC 6-3-4-8 (g), IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of corporate sales and withholding taxes against him as a responsible officer.

**Statement of Facts**

The taxpayer was the vice president of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 1993. The department assessed the outstanding corporate withholding taxes, sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

**I. Sales and Withholding Tax** -Responsible Officer Liability

**Discussion**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer produced adequate documentation that he had no duty to collect and remit sales and withholding taxes to the state. Therefore, he is not personally responsible for the payment of the corporate sales and withholding taxes.

### **Finding**

The taxpayer’s protest is sustained.

KMA/JMM/DK/06/28/02